

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY A. YANNY

Appeal No. 97-0928
Application No. 08/353,190¹

ON BRIEF

Before CALVERT, COHEN, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 22. Claims 23 through 27 have been withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to a nonelected invention.

We REVERSE.

¹ Application for patent filed December 9, 1994.

BACKGROUND

The appellant's invention relates to a roof flashing. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's brief.

The prior art reference of record relied upon by the examiner as evidence of anticipation under 35 U.S.C. § 102(b) and obviousness under 35 U.S.C. § 103 is:

Hasty	5,036,636	Aug. 6, 1991
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Claims 1, 3 through 11, 14 and 17 through 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Hasty.

Claims 2, 12, 13, 15, 16 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hasty.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 102(b) and § 103 rejections, we make reference to the final rejection (Paper No. 5, mailed November 29, 1995) and the examiner's answer (Paper No. 10, mailed June 25, 1996) for the examiner's complete reasoning

in support of the rejections, and to the appellant's brief (Paper No. 9, filed May 28, 1996) and reply brief (Paper No. 11, filed July 31, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Both of the examiner's rejections are based upon the examiner's determination that Figure 6 of Hasty discloses an upstanding dome portion having a solid flange.

The appellant argues that the flange disclosed in Figure 6 of Hasty on the upstanding dome portion is not a solid flange.

Thus, the real issue on appeal is whether or not the flange disclosed in Figure 6 of Hasty on the upstanding dome portion is solid.

Initially, we note that the appellant on page 7, lines 8-9, of the specification states that the "flange 30 is of a solid construction, with no holes passing through from top to bottom." In our opinion, the broadest reasonable interpretation² consistent with the specification of the recited "solid flange"³ is a flange without any holes passing through from the top of the flange to the bottom of the flange.

Hasty discloses a roof flashing. Figure 6 of Hasty is a front elevation view, in vertical cross-section, of an embodiment wherein a collar has a horizontal accordion section, and is overmolded upon a plastic hard base support. Hasty states (column 7, lines 1-10) that

FIG. 6 illustrates a third embodiment, wherein an elastomeric collar, 102 has a circular overmolding flange, 104 that is shown schematically in place upon a hard plastic

² In proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

³ We note that claim 1 recites "a solid planar flange," claim 14 recites "a solid flange," and claim 12 recites "a flange." Since claim 12 later refers to "the solid flange," we will read the recitation of "a flange" as being "a solid flange." The appellant should amend claim 12 to be consistent with this reading.

base, at 104 [sic, 105]. Further details of the preferred interconnection between the soft elastomeric collar of FIG. 6 and the flange of the hard plastic base are shown in copending application Ser. No. 07/136,610, incorporated by reference herein for those details of an overmolding between the soft elastomer collar 102 and hard plastic base 105.

In our opinion, Figure 6 of Hasty does not clearly disclose an upstanding dome portion having a solid flange. In fact, it is our determination that the schematic showing in Figure 6 of Hasty would be insufficient for one skilled in the art to know if the inwardly projecting flange at the top of the hard plastic base 105 was solid or not. Thus, Hasty does not teach a "solid flange" as recited in all the claims under appeal. Furthermore, as correctly pointed out by the appellant, the flange of the hard plastic base shown in copending application Ser. No. 07/136,610, now U.S. Patent No. 4,864,782, incorporated by reference by Hasty, is not a "solid flange."

Since the claimed "solid flange" is not taught either explicitly or implicitly by the teachings of Hasty, we are constrained to reverse both the examiner's rejection of claims 1, 3 through 11, 14 and 17 through 21 under 35 U.S.C. § 102(b) as being anticipated by Hasty and the examiner's rejection of claims

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2, 12, 13, 15, 16 and 22 under 35 U.S.C. § 103 as being
unpatentable over Hasty.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3 through 11, 14 and 17 through 21 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 2, 12, 13, 15, 16 and 22 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

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APPLICATION NO. 08/353,190

APJ NASE

APJ COHEN

APJ CALVERT

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 17 Mar 98

FINAL TYPED: